

**Response Under 37 CFR 1.116**

**Expedited Procedure**

**Examining Group 1637**

Application No. 10/581,375

Paper Dated: February 15, 2012

In Reply to USPTO Correspondence of September 15, 2011

Attorney Docket No. 3135-061626

**REMARKS**

The Office Action has been reviewed and the Examiner's comments carefully considered. Claims 25-49 are pending in this application, with claims 25, 45, and 48 being in independent form. Claims 28 and 29 have been cancelled. Claim 25 has been amended. Support for the amendments can be found, for example, in paragraphs [0015] and [0054] of the published specification and cancelled claims 28 and 29. Claims 25-27 and 30-49 will remain pending upon entry of this Amendment. No new matter has been added.

**Rejections Under 35 U.S.C. § 102**

Claims 25-27, 30-32, 36-39, 41-42, and 49 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Publication No. 2004/0099696 to Stratemeier et al. (hereinafter "Stratemeier"). Claims 25-32, 38-42, and 49 stand rejected under 35 U.S.C. § 102(b) as being anticipated by British Patent No. GB 2079183 to Yoshizane et al. (hereinafter Yoshizane). In view of the above amendments and the following remarks, reconsideration and withdrawal of these rejections are respectfully requested.

Independent claim 25 has been amended to further define the structure of the distal part of the flexible tube and include the limitations of cancelled claims 28 and 29. Thus, amended independent claim 25 now recites, *inter alia*, that: (1) the distal part of the flexible tube is adapted for being engaged by a user's mouth; and (2) the bent tube part is adapted to urge the distal tube part outside the enclosing means by means of resilient force (emphasis added). Applicants respectfully submit that none of the cited references teach or suggest this feature.

With regard to Stratemeier, this reference appears to be directed to a pressurized canister (12) having a flexible hose (38) for delivering pressurized fluid from the interior of the canister (12) by activating an operating element (30). Stratemeier also teaches that a cover cap (44) may be provided to cover the hose (38).

Stratemeier fails to teach or suggest that the distal part of its flexible hose (38) is adapted to engage a user's mouth. Stratemeier is expressly related to storing and dispensing automotive fluids into hard-to-reach inlets for such fluids (Abstract). Accordingly, Stratemeier's container is not suitable for storing liquids for human consumption and is not adapted for

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engaging a user's mouth. The fitting (46) provided at the distal end of the flexible tube (38) has a threaded collar (48) or a tip (52) adapted for engaging an inlet, such as a nipple (paragraph [0019]). Stratemeier goes on to define that, in each embodiment, the distal end of the flexible tube (38) is adapted for delivering the contents of the canister (12) into a reservoir. On the other hand, as expressly recited in amended independent claim 25, the distal part of the claimed flexible tube is adapted for engaging a user's mouth. The contents of the claimed dispensing device can thus be delivered to the user's mouth, rather than a storage reservoir, as taught by Stratemeier.

With regard to the newly-amended limitation reciting that the bent tube part is adapted to urge the distal tube part outside the enclosing means by means of resilient force, the Examiner acknowledges that Stratemeier fails to expressly or impliedly teach that the flexible tube (38) has a bent tube part between the distal part and the part connected to the valve. In Stratemeier, the distal part of the flexible tube (38) cannot be moved outside the cap (44) by changing the curvature of the bent tube part, nor does the bent part urge the distal part outside the enclosing means by means of a resilient force. Accordingly, Stratemeier fails to teach or suggest each and every limitation of independent claim 25, as amended.

With regard to Yoshizane, this reference similarly fails to teach or suggest the newly-added limitations of claim 25. Regarding the first added limitation, Yoshizane is directed to a container for storing a liquid insecticidal preparation (page 1, lines 3-6). Accordingly, Yoshizane's container is not suitable for storing liquids for human consumption and, therefore, is not adapted for engaging a user's mouth.

With regard to the second added limitation, Yoshizane fails to teach or suggest a bent tube part which is adapted to urge the distal part of the flexible tube. The Examiner construes the curved portion of Yoshizane's nozzle (3) shown in Fig. 9 as teaching this limitation; however, the distal end of the nozzle (3) cannot be moved outside the enclosing means, as required by independent claim 25. The Examiner construes the recess groove 2b as the claimed "enclosing means"; however, this structure is provided on the spray button (2) which is construed by the Examiner as the claimed operating element. The Examiner appears to

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alternatively refer to the cap (5) and different parts of the spray button (2) as “enclosing means”; however, this creates certain ambiguities because claim 25 requires the operating element (i.e., spray button) to be only accessible from the outside in the second state. Based on the Examiner’s interpretation, Yoshizane’s “operating element” is accessible regardless of whether the nozzle (3) is in a first state (i.e., distal part of nozzle is encased by cap) or in a second state (i.e., distal part of nozzle is moved at least partly the outside cap). This is contrary to the teachings of independent claim 25.

Furthermore, Yoshizane also fails to teach or suggest that the bent tube part is adapted to urge the distal tube part outside the enclosing means by means of resilient force. Yoshizane relies on a spring (4) to provide a restoring force which urges the nozzle (3) from a bent position to a straightened position. In contrast, the flexible tube of the claimed dispensing device has a bent part which resiliently urges the distal part of the flexible tube to move outside the enclosing means in a second position. The resilient force is attributed to the design of the flexible tube which is configured for bending. Only tubes having a small size or cross section, such as drinking straws, are adapted for bending over in this manner. On the other hand, Yoshizane’s nozzle requires an elastic spring (4) to achieve this characteristic.

Accordingly, Applicants respectfully submit that, for at least the foregoing reasons, amended independent claim 25 is not anticipated by or made obvious over Stratemeier or Yoshizane, whether considered individually or in combination. Because claims 26-27, 29-32, 36-42, and 49 depend on, and include all of the limitations of amended independent claim 25, then the dependent claims are believed to be patentable for at least the reasons discussed above in connection with independent claim 25. Reconsideration and withdrawal of the rejections of the above claims are respectfully requested.

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**Rejections Under 35 U.S.C. § 103**

Claim 34 stands rejected under 35 U.S.C. § 103(a) for obviousness over Stratemeier in view of U.S. Patent No. 3,955,716 to Goncalves. Claim 33 is rejected under 35 U.S.C. § 103(a) for obviousness over Stratemeier in view of Yoshizane. In view of the above amendments and the following remarks, reconsideration and withdrawal of these rejections are respectfully requested.

Claims 33 and 34 indirectly depend on, and include all limitations of amended independent claim 25. As discussed above, neither Stratemeier nor Yoshizane teaches or suggests each and every limitation of independent claim 25, as amended. Furthermore, these references cannot be combined in any obvious manner with any of the remaining prior art of record to teach or suggest that: (1) the distal part of the flexible tube is adapted to engage a user's mouth; and (2) the bent tube part is adapted to urge the distal tube part outside the enclosing means by means of resilient force. Because dependent claims 33 and 34 indirectly depend from, and add further limitations to independent claim 25, claims 33 and 34 are believed to be allowable for at least the reasons discussed hereinabove in connection with amended independent claim 25.

**Supplemental Information Disclosure Statement**

Applicants recently received an Office Action from the Japanese Patent Office in a related Japanese application. Consideration of the references cited in this Office Action is respectfully requested.

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**CONCLUSION**

In view of the above amendments and remarks, reconsideration of the rejections and allowance of claims 25-27, 29-34, 36-42, and 49 are respectfully requested.

Respectfully submitted,

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